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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,497	09/19/2005	James Peter Mason	125380	7736
25944	7590	12/18/2007		
OLIFF & BERRIDGE, PLC P.O. BOX 320850 ALEXANDRIA, VA 22320-4850			EXAMINER FERNSTROM, KURT	
			ART UNIT 3711	PAPER NUMBER
			MAIL DATE 12/18/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/549,497	<b>Applicant(s)</b> MASON, JAMES PETER	
	<b>Examiner</b> Kurt Fernstrom	<b>Art Unit</b> 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on 27 September 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24-31, 33, 35-38, 40, 41, 44 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pereira in view of Rebbeck. Pereira discloses a terrain model element comprising a base 8 having adhered on an upper face thereon a shaped layer 2 comprised substantially of latex. Pereira fails to disclose the use of foamed plastic in the base. However, this material is well known in terrain model devices, as disclosed for example in column 3, lines 1-28 of Rebbeck. It would have been obvious to one of ordinary skill in the relevant art to modify the teachings of Pereira as viewed in combination with Rebbeck by providing foamed plastic for the purpose of providing a durable yet flexible base. With respect to claim 25, the bases of Pereira and Rebbeck are sheet-like. With respect to claims 26 and 37, the foam of Rebbeck is flexible. With respect to claim 27, the base of Pereira is molded onto the latex layer. With respect to claim 28, the shaped layer of Pereira appears to be within the claimed thickness, particularly given that Pereira discloses at column 2, line 29 a "relatively thin" layer. With respect to claims 29 and 36, Pereira discloses a material 5 which substantially fills a cavity shape of the shaped layer. Viewed with Rebbeck, it would have been obvious

to fill the cavities with a foamed plastic. With respect to claim 30, Pereira further discloses at column 2, lines 44-50 that the material "**preferably** fill[s] the deep depressions", thus suggesting hollow parts as claimed. With respect to claim 33, Pereira discloses in column 3, lines 22-33 a coating of paint. With respect to claim 35, Rebbeck discloses a plurality of elements located alongside each other to provide a continuous terrain appearance. With respect to claim 38, the shaped layer of Pereira comprises an undercut shape. With respect to claims 40, 41 and 44, Pereira discloses a method substantially as claimed. The step of pouring out excess liquid is considered to be an obvious variation on the teachings of Pereira, which include a step of letting the liquid latex dry. With respect to claim 45, Pereira discloses a terrain model element as claimed.

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pereira in view of Rebbeck, and further in view of Cummings. Pereira as viewed in combination with Rebbeck discloses all of the limitations of the claims with the exception of the use of plaster-of-paris. However, this feature is well known, as disclosed for example in column 5, lines 52-54 of Brokaw. It would have been obvious to one of ordinary skill in the relevant art to modify the teachings of Pereira as viewed in combination with Rebbeck by providing a plaster of paris mold for the purpose of absorbing water.

Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pereira in view of Rebbeck, and further in view of Brokaw. Pereira as viewed in combination with Rebbeck discloses all of the limitations of the claims with the exception of the hexagonal shape of the modules. However, this feature is well known, as disclosed for

example in column 2, lines 9-13 of Brokaw. It would have been obvious to one of ordinary skill in the relevant art to modify the teachings of Pereira as viewed in combination with Rebbeck by providing hexagonal modules for the purpose of providing more variability in the combinations that can be created.

Claims 42 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pereira in view of Rebbeck, and further in view of "Casting Plasticine". Pereira as viewed in combination with Rebbeck discloses all of the limitations of the claims with the exception of the use of alcohol as recited. However, this step is known, as disclosed for example page 7 of Casting Plasticine. It would have been obvious to one of ordinary skill in the relevant art to modify the teachings of Pereira as viewed in combination with Rebbeck by applying alcohol to the mold prior to use for the purpose of facilitating the absorption of water.

### ***Response to Arguments***

Applicant's arguments filed September 27, 2007 have been fully considered but they are not persuasive. With respect to the arguments concerning claim 24, the layer 2 of Pereira is latex, and is inherently a shaped layer, as it conforms to the mold. The layer provides the terrain shape, as shown in Figure 5, as the molded latex layer 2 is the upper layer of the terrain model and filler is placed within the model to support the shape created by the latex layer.

Also, with respect to the arguments concerning the combination of Pereira and Rebeck, the teachings of Rebeck are directed to a foamed base for a terrain element.

The method of production of Rebeck is not being cited. Rather, it is simply the use of a foamed plastic base for a terrain element that is being combined with the teachings of Pereira. The combination of teachings amounts to a simple substitution of one known element (foamed plastic) for another (fabric sheet) to obtain predictable results.

With respect to the arguments concerning claim 40, a step of pouring out excess latex is obvious, in that it is foreseeable that one might inadvertently pour too much liquid into the mold. One of ordinary skill would understand that in such an event, one would pour out excess, unnecessary latex. While applicant might have a different purpose related to pouring out excess liquid, the step itself is obvious. Also, Pereira discloses in column 1, lines 36-55 that a mold is formed, into which an upper shaped layer (latex layer 2) is formed.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Fernstrom whose telephone number is (571) 272-4422. The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Kim can be reached on 571 272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



KF  
December 12, 2007

**KURT FERNSTROM  
PRIMARY EXAMINER**